

(iii) Financial statements for each year the loan or extension of credit is outstanding;

(iv) The bank's assessment of the borrower's means of servicing the loan or extension of credit, including specific reasons in support of that assessment. The assessment shall include an analysis of the borrower's financial history, its present and projected economic and financial performance, and the significance of any financial support provided to the borrower by third parties, including the borrower's central government; and

(v) A loan agreement or other written statement from the borrower which clearly describes the purpose of the loan or extension of credit. The written representation will ordinarily constitute sufficient evidence that the purpose test has been satisfied. However, when, at the time the funds are disbursed, the bank knows or has reason to know of other information suggesting that the borrower will use the proceeds in a manner inconsistent with the written representation, it may not, without further inquiry, accept the representation.

(3) *Restructured loans*—(i) *Non-combination rule*. Notwithstanding paragraphs (a) through (e) of this section, when previously outstanding loans and other extensions of credit to a foreign government, its agencies, and instrumentalities (i.e., public-sector obligors) that qualified for a separate lending limit under paragraph (f)(1) of this section are consolidated under a central obligor in a qualifying restructuring, such loans will not be aggregated and attributed to the central obligor. This includes any substitution in named obligors, solely because of the restructuring. Such loans (other than loans originally attributed to the central obligor in their own right) will not be considered obligations of the central obligor and will continue to be attributed to the original public-sector obligor for purposes of the lending limit.

(ii) *Qualifying restructuring*. Loans and other extensions of credit to a foreign government, its agencies, and instrumentalities will qualify for the non-combination process under paragraph (f)(3)(i) of this section only if they are restructured in a sovereign

debt restructuring approved by the OCC, upon request by a bank for application of the non combination rule. The factors that the OCC will use in making this determination include, but are not limited to, the following:

(A) Whether the restructuring involves a substantial portion of the total commercial bank loans outstanding to the foreign government, its agencies, and instrumentalities;

(B) Whether the restructuring involves a substantial number of the foreign country's external commercial bank creditors;

(C) Whether the restructuring and consolidation under a central obligor is being done primarily to facilitate external debt management; and

(D) Whether the restructuring includes features of debt or debt-service reduction.

(iii) *50 percent aggregate limit*. With respect to any case in which the non-combination process under paragraph (f)(3)(i) of this section applies, a national bank's loans and other extensions of credit to a foreign government, its agencies and instrumentalities, (including restructured debt) shall not exceed, in the aggregate, 50 percent of the bank's capital and surplus.

§ 32.6 Nonconforming loans.

(a) A loan, within a bank's legal lending limit when made, will not be deemed a violation but will be treated as nonconforming if the loan is no longer in conformity with the bank's lending limit because—

(1) The bank's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, the lending limit or capital rules have changed; or

(2) Collateral securing the loan to satisfy the requirements of a lending limit exception has declined in value.

(b) A bank must use reasonable efforts to bring a loan that is nonconforming as a result of paragraph (a)(1) of this section into conformity with the bank's lending limit unless to do so would be inconsistent with safe and sound banking practices.

(c) A bank must bring a loan that is nonconforming as a result of circumstances described in paragraph (a)(2) of this section into conformity

with the bank's lending limit within 30 calendar days, except when judicial proceedings, regulatory actions or other extraordinary circumstances beyond the bank's control prevent the bank from taking action.

§ 32.7 Pilot program for residential real estate and small business loans.

(a) *Residential real estate, small business, and small farm loans.* (1) In addition to the amount that a national bank may lend to one borrower under § 32.3, an eligible national bank may make residential real estate loans or extensions of credit to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a State bank is permitted to lend under the State lending limit that is available for residential real estate loans or unsecured loans in the State where the main office of the national bank is located. Any such loan or extension of credit must be secured by a perfected first-lien security interest in 1-4 family real estate in an amount that does not exceed 80 percent of the appraised value of the collateral at the time the loan or extension of credit is made. In no event may a bank lend more than \$10 million to one borrower under this authority.

(2) In addition to the amount that a national bank may lend to one borrower under § 32.3, an eligible national bank may make small business loans or extensions of credit to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a State bank is permitted to lend under the State lending limit that is available for small business loans or unsecured loans in the State where the main office of the national bank is located. In no event may a bank lend more than \$10 million to one borrower under this authority.

(3) In addition to the amount that a national bank may lend to one borrower under § 32.3, an eligible national bank may make small farm loans or extensions of credit to one borrower in the lesser of the following two

amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a State bank is permitted to lend under the State lending limit that is available for small farm loans or unsecured loans in the State where the main office of the national bank is located. In no event may a bank lend more than \$10 million to one borrower under this authority.

(4) The total outstanding amount of a national bank's loans and extensions of credit to one borrower made under §§ 32.3(a) and (b), together with loans and extensions of credit to the borrower made pursuant to paragraphs (a)(1), (2), and (3) of this section, shall not exceed 25 percent of the bank's capital and surplus.

(5) The total outstanding amount of a national bank's loans and extensions of credit to all of its borrowers made pursuant to the special lending limits provided in paragraphs (a)(1), (2), and (3) of this section may not exceed 100 percent of the bank's capital and surplus.

(b) *Application process.* An eligible bank must submit an application to, and receive approval from, its supervisory office before using the special lending limits in paragraphs (a)(1), (2), and (3) of this section. The supervisory office may approve a completed application if it finds that approval is consistent with safety and soundness. To be deemed complete, the application must include:

(1) Certification that the bank is an "eligible bank" as defined in § 32.2(i);

(2) Citations to relevant State laws or regulations;

(3) A copy of a written resolution by a majority of the bank's board of directors approving the use of the limits provided in paragraphs (a)(1), (2), and (3) of this section, and confirming the terms and conditions for use of this lending authority; and

(4) A description of how the board will exercise its continuing responsibility to oversee the use of this lending authority.

(c) *Duration of approval.* Except as provided in § 32.7(d), a bank that has received OCC approval may continue to make loans and extensions of credit under the special lending limits in paragraphs (a)(1), (2), and (3) of this